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House Bill 392 – Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing Position: Support

Dear Chairperson Clippinger, Vice Chairperson Bartlett, and Members of the House Judiciary Committee:

The Maryland Commission on Civil Rights (“MCCR”; “The Commission”) is the State agency responsible for the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, health services, and state contracts based on race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, gender identity, genetic information, physical and mental disability, and source of income.

House Bill 392 amends Sections 10-401(13) and 10-402(c)(12) of the Courts and Judicial Proceedings Article to allow persons working as fair housing testers to intercept communications for the purpose of obtaining evidence of a fair housing violation. This bill applies only to fair housing testers from the government or a nonprofit civil rights organization who are also a party to the communication.

Fair housing testers are trained individuals who discreetly pose as prospective renters or buyers to gather information on fair housing violations by housing providers. By visiting the property, making observations, and speaking with housing agents, testers can obtain evidence on whether the provider is in compliance with fair laws, or whether they are denying housing to people based on protected characteristics, such as race or disability.

Maryland is one of only eleven states that requires all parties’ consent to record communications. The current requirement in Maryland prohibits testers from recording their own interactions with housing providers or forces them to get the consent of the potential violator, thus defeating the purpose of the test. HB 392 would provide a limited one-party recording exception to Maryland’s general all-party consent rule. This carve out would align with the majority of other states that permit interception when the recorder is a party to the conversation.

One-party recording laws have proven effective in discovering fair housing violations. A 2019 study in New York—a one-party consent state—recruited housing testers to record their meetings with real estate agents and found that the testers of color were subjected to differential treatment more than white testers. Black testers experienced this discrimination 49% of the time, Latino testers 39% of the time, and Asian testers 19% of the time. In

“Our vision is to have a State that is free from any trace of unlawful discrimination.”

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addition to revealing violations, documenting testers' interactions through recordings also reduces issues with credibility, truthfulness, and accuracy. Such recorded evidence helps promote fairer outcomes both for prospective tenants and for providers.

Additionally, allowing testers to gather recordings of conversations is vital to pursuing difficult cases that otherwise may fail due to a lack of corroborating evidence. For example, landlords may tell prospective tenants with Section 8 vouchers that their building is not HUD-approved for Section 8 housing, while in reality, HUD does not provide blanket Section 8 approval to entire properties. Instead, Section 8 eligibility is individual to a particular person, who may generally seek housing at any private housing property. But evidence of these misrepresentations is hard to come by. HB 392's exception is therefore needed to substantiate investigations and put an end to fair housing rights violations.

For these reasons, the Maryland Commission on Civil Rights urges a favorable vote on HB 392. Thank you for your time and consideration of the information contained in this letter. MCCR looks forward to the continued opportunity to work with you to improve and promote fair housing and civil rights in Maryland.